



## PNAE IN DEFAULT: LEGAL AND TECHNICAL BASIS FOR REVIEWING FEDERAL TRANSFERS AND THE JUDICIALIZATION OF STATE OMISSION

### PNAE EM DEFASAGEM: FUNDAMENTOS JURÍDICOS E TÉCNICOS PARA A REVISÃO DOS REPASSES FEDERAIS E A JUDICIALIZAÇÃO DA OMISSÃO ESTATAL

### PNAE EN INCUMPLIMIENTO: FUNDAMENTO JURÍDICO Y TÉCNICO PARA LA REVISIÓN DE LAS TRANSFERENCIAS FEDERALES Y LA JUDICIALIZACIÓN DE LA OMISIÓN ESTATAL



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Álvaro Leiva dos Santos<sup>1</sup>

#### ABSTRACT

This article analyzes the insufficient federal funding for the National School Feeding Program (PNAE), highlighting its impact on the effectiveness of the fundamental rights to food and basic education in Brazil. Based on documentary analysis, a regulatory review, and a study of case law, the article discusses budgetary evidence, structural flaws identified by the Federal Court of Auditors (TCU), and pending legislative proposals. Based on the 1988 Federal Constitution, the case law of the Supreme Federal Court (STF), and international commitments, the paper substantiates the federal government's legal obligation to ensure adequate funding for the PNAE. The article concludes that the funds allocated urgently need to be restored through legal updates and judicial review as a way to guarantee dignity and equity in access to school meals.

**Keywords:** School Meals. Public Educational Policies. Right To Food. Underfunding. Judicialization.

#### RESUMO

O presente artigo analisa a insuficiência dos repasses federais ao Programa Nacional de Alimentação Escolar (PNAE), destacando seus impactos na efetividade dos direitos fundamentais à alimentação e à educação básica no Brasil. A partir de análise documental, revisão normativa e estudo de jurisprudência, são discutidas evidências orçamentárias, falhas estruturais identificadas pelo Tribunal de Contas da União (TCU) e propostas legislativas em tramitação. Com base na Constituição Federal de 1988, na jurisprudência do Supremo Tribunal Federal (STF) e em compromissos internacionais, o trabalho fundamenta a obrigação jurídica da União em assegurar financiamento adequado ao PNAE. Conclui-se pela necessidade urgente de recomposição dos valores repassados, mediante atualização legal e judicialização, como forma de garantir dignidade e equidade no acesso à alimentação escolar.

<sup>1</sup> Master's student in public administration. Instituto Brasileiro de Ensino.  
E-mail: alvaroleivasantos@gmail.com



**Palavras-chave:** Alimentação Escolar. Políticas Públicas Educacionais. Direito à Alimentação. Subfinanciamento. Judicialização.

## **RESUMEN**

Este artículo analiza la insuficiencia de financiación federal para el Programa Nacional de Alimentación Escolar (PNAE), destacando su impacto en la efectividad de los derechos fundamentales a la alimentación y la educación básica en Brasil. Con base en el análisis documental, una revisión regulatoria y un estudio jurisprudencial, el artículo analiza la evidencia presupuestaria, las fallas estructurales identificadas por el Tribunal de Cuentas de la Unión (TCU) y las propuestas legislativas pendientes. Con base en la Constitución Federal de 1988, la jurisprudencia del Supremo Tribunal Federal (STF) y los compromisos internacionales, el documento fundamenta la obligación legal del gobierno federal de garantizar una financiación adecuada para el PNAE. El artículo concluye que es urgente restablecer los fondos asignados mediante actualizaciones legales y revisión judicial como forma de garantizar la dignidad y la equidad en el acceso a la alimentación escolar.

**Palabras clave:** Alimentación Escolar. Políticas Educativas Públicas. Derecho a la Alimentación. Subfinanciamento. Judicialización.



## 1 INTRODUCTION

The National School Feeding Program (PNAE), established in 1955 and regulated by Law No. 11,947/2009, is one of the longest-running and most strategic Brazilian public policies. Linked to the food security agenda, the right to education and social protection, the program aims to ensure the regular supply of nutritionally adequate school meals to all students in public basic education (BRASIL, 2009; FNDE, 2025).

Despite being widely recognized by international organizations, the PNAE has faced a scenario of chronic underfunding for decades, especially by the Union. This budgetary fragility compromises the realization of the social rights provided for in articles 6 and 208 of the Federal Constitution of 1988, notably in contexts marked by food insecurity and extreme poverty (BRASIL, 1988; BURITY, 2011). According to the National Health Survey (PNS), more than 10.3 million Brazilians live with severe food insecurity (IBGE, 2019), which elevates school feeding to the status of an essential policy for survival and human dignity.

Reports from entities such as Fineduca (2020), the School Feeding Observatory (2024) and the Federal District Teachers' Union (SINPRO-DF, 2023) indicate that the per capita values currently passed on by the Union are up to 40% behind the real cost of adequate school meals, according to nutritional parameters established by the FNDE itself. This lag not only affronts the principle of administrative efficiency (CF/88, art. 37), but also violates international commitments assumed by Brazil, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR, art. 11) and General Comment No. 12 of the UN ESCR Committee (1999).

## 2 UNDERFUNDING OF THE PNAE: BUDGETARY EVIDENCE AND SOCIAL IMPACTS

The historical analysis of federal transfers to the National School Feeding Program (PNAE) reveals a scenario of progressive financial insufficiency, marked by a disconnection between the amounts transferred by the Union and the real costs to ensure nutritionally adequate meals for students in the public network. Data from Fineduca indicate that, between 2014 and 2019, there was an accumulated reduction of approximately R\$ 924 million in transfers, without proportional inflationary correction, especially in the context of the rise in the prices of basic foodstuffs. According to Costa, Tavares, and Couto (2021), recent reforms have not been sufficient to ensure equity in the financing of public education.

The gap is even more critical when considering the accumulated food inflation between 2010 and 2023, which exceeded 130%, according to the Extended National Consumer Price Index (IPCA-Alimentos). On the other hand, the nominal adjustment of 39% promoted by the



Union in 2023 was not enough to recompose the purchasing power of the per capita values, remaining below the technical parameters suggested by nutritionists and local managers.

This insufficiency disproportionately affects small municipalities, with low capacity for their own collection, which are unable to supplement federal amounts with their own resources. As a result, school menus are reduced or simplified, directly harming the nutritional quality of the meals served. A study by the School Feeding Observatory (2024) points out that this inequality causes more severe damage in peripheral regions and vulnerable populations, deepening existing inequalities. This is reinforced by Silva et al. (2025), who identified low adherence to school meals among non-white and overweight students.

In addition, the budget gap compromises strategic educational goals. Several studies have shown a correlation between adequate school feeding and improvement in student attendance, performance and permanence, especially among children in poverty. The maintenance of a financing model that disregards the regional and social specificities of Brazilian municipalities represents, therefore, a concrete obstacle to educational equity and the fight against school dropout. As Saviani (2008) observes, the maintenance of public education has always faced structural resistance in Brazil.

### **3 TECHNICAL ANALYSIS OF TCU RULING NO. 743/2025: STRUCTURAL WEAKNESSES AND RISKS TO THE GOVERNANCE OF THE PNAE**

Ruling No. 743/2025 of the Federal Court of Accounts (TCU) represents a milestone in the identification of serious operational weaknesses in the control and inspection mechanisms of the National School Feeding Program (PNAE). Based on an audit carried out in 2024, the TCU concluded that the monitoring instruments of the National Fund for the Development of Education (FNDE) are rudimentary, manual, and incompatible with the size of the program, which serves more than 40 million students in about 90 thousand public schools throughout the national territory (TCU, 2025).

Among the main findings of the audit, it is noteworthy that the FNDE analyzes, on average, only 30 bank accounts per month, a tiny number given the magnitude of the network. In addition, financial transactions between PNAE accounts without documentary justifications, lack of traceability of transfers and lack of a computerized system for automatic cross-checking of financial, operational and accounting data were identified (TCU, 2025; CGU, 2024).

This institutional precariousness directly compromises the effectiveness of the constitutional principles of efficiency, morality and publicity in the management of public resources (CF/88, art. 37). The TCU also highlighted that the FNDE does not establish



specific institutional goals for improving the governance of the PNAE, nor does it use predictive auditing or artificial intelligence tools to detect fraud — practices already consolidated in other large-scale social programs, such as Bolsa Família (BRASIL, 2023).

Among the recommendations of the Ruling, the following stand out: (i) the implementation of automated control and audit mechanisms; (ii) the expansion of the sampling of inspections; (iii) the strengthening of active transparency in the accountability of federated entities; and (iv) the incorporation of technical and regional criteria for transfers and inspections. Such measures are fundamental not only to ensure the fairness of spending, but to ensure the right to school meals in a full and equitable manner, as provided for in articles 208, VII, and 211 of the Federal Constitution (BRASIL, 1988).

In this scenario, it is imperative that the TCU's findings be converted into coordinated institutional action, with the participation of the Public Prosecutor's Office, State Audit Courts, School Feeding Councils (CAEs) and municipal managers, in order to correct the course of public policy and reestablish its social legitimacy.

#### **4 LEGISLATIVE PROPOSALS IN PROGRESS: PATHS FOR THE STRUCTURAL READJUSTMENT OF THE PNAE**

In view of the technical, legal and social recognition of the insufficiency of federal transfers to the National School Feeding Program (PNAE), legislative proposals are being processed in the National Congress that aim to restructure the financing model of the policy, both in the budgetary and legal-constitutional spheres. Two proposals stand out for their potential for immediate and structural impact:

- ◆ **Bill No. 2754/2023**

This project proposes the automatic and annual update of the per capita values transferred by the Union to the PNAE, based on the Extended National Consumer Price Index (IPCA) of food. The proposal seeks to establish an objective and continuous monetary correction mechanism, which ensures the maintenance of the purchasing power of federal transfers, preserving the nutritional quality and regularity of service (BRASIL, 2023).

The absence of automatic indexation, until then, exposes public policy to budget fluctuations and political discretion, resulting in accumulated losses to the population served. PL No. 2754/2023 is supported by technical studies by Fineduca (2020), which demonstrate the urgency of updating mechanisms to maintain the effectiveness of transfers in the face of market variations.

- ◆ **Bill No. 1049/2023**



This project proposes the inclusion of expenses with school meals in the list of so-called "mandatory expenses for the maintenance and development of education" (MDE), provided for in article 212 of the Federal Constitution. As a result, transfers to the PNAE would be linked to the constitutional minimum application of 25% of tax revenues in education by the Union, states and municipalities (BRASIL, 1988).

By elevating the PNAE to the status of a priority and financially protected educational policy, PL No. 1049/2023 corrects a historical gap in educational legislation and reinforces the articulation between the right to education and the right to food. This proposal also responds to the commands of Law No. 14,113/2020 (New Fundeb), which already admits the application of its resources in school feeding as a component of the development of education (BRASIL, 2020).

These legislative initiatives represent a fundamental step towards the institutionalization of a fairer, more stable and transparent financing model for the PNAE. Its approval is a necessary condition to ensure the continuity, quality and equity of public policy throughout the national territory.

## **5 LEGAL BASIS: THE UNION'S OBLIGATION TO ENSURE ADEQUATE SCHOOL FEEDING**

The right to school meals transcends the administrative and budgetary fields, being inscribed in the core of fundamental social rights guaranteed by the Constitution of the Federative Republic of Brazil of 1988. Its guarantee is a legal duty of the State, notably of the Union, both due to the centrality of the policy and the federative structure of the distribution of competences and resources.

### **5.1 CONSTITUTIONAL BASIS**

Article 6 of the Constitution includes food among the fundamental social rights, along with education, health, housing and work. Article 208, item VII, expressly determines the provision of school meals as a duty of the State within the scope of the right to compulsory basic education. In addition, article 211, paragraph 1, establishes the responsibility of the Union for technical and financial assistance to federated entities, especially to ensure equity and quality of education.

The systematic interpretation of these provisions obliges the Union to ensure adequate funding of school feeding policies, under penalty of unconstitutional omission, according to the consolidated doctrine of the Federal Supreme Court (STF) on the principle of prohibition of social regression (SARLET, 2014; BARROSO, 2010).



## 5.2 INFRA-CONSTITUTIONAL LEGISLATION

Law No. 11,947/2009 regulates the PNAE, establishing its obligation for all basic education and defining nutritional and pedagogical parameters. This rule imposes obligations on the Federal Government through the FNDE, including regarding the regularity, sufficiency and transparency of transfers.

Law No. 14,113/2020 (New Fundeb) reinforces this perspective by expressly admitting that the fund's resources can be used for school feeding expenses, as long as they are linked to the promotion of the development of education (art. 70, item VI of the LDB – Law No. 9,394/1996). This strengthens the connection between food and the educational process.

## 5.3 CONSTITUTIONAL JURISPRUDENCE

The recent jurisprudence of the Supreme Court has reinforced the responsibility of the Union in the implementation of essential social policies. In ADPF No. 708, the Court decided that the Executive Branch cannot omit to implement public policies aimed at mitigating social vulnerabilities, determining the release of resources for the National Fund on Climate Change. The logic of the decision, based on the prohibition of retrogression and on the principle of the dignity of the human person (FC, art. 1, III), is fully applicable to school meals.

In ADI No. 5595, which dealt with the minimum funding of public health, the STF reaffirmed that the public budget should be subordinated to fundamental rights, and not the other way around. Both decisions strengthen the thesis that the Union has a positive obligation to guarantee adequate financing of structuring policies, such as the PNAE.

## 5.4 INTERNATIONAL COMMITMENTS

Brazil is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), incorporated into the legal system by Decree No. 591/1992, whose article 11 recognizes the right of every person to adequate food. General Comment No. 12 of the UN ESCR Committee (1999) states that States should guarantee public school feeding programmes as concrete measures to ensure this right, especially among children and adolescents.

In addition, the Sustainable Development Goals (SDGs) of the UN 2030 Agenda, especially SDG 2 (Zero Hunger) and SDG 4 (Quality Education), reinforce the duty of the Brazilian State to ensure integrated public policies that guarantee food security in the educational environment.



## 5.5 SPECIALIZED DOCTRINE

The Brazilian constitutional doctrine is unanimous in recognizing school feeding as a fundamental right derived from the dignity of the human person and the existential minimum. Ingo Wolfgang Sarlet (2014) argues that "the right to food is part of the essential content of fundamental social rights and, therefore, imposes immediate positive benefits on the part of the State". Paulo Bonavides (2004) points out that the realization of social rights constitutes the core of the Democratic State of Law.

## 6 JURISPRUDENCE AND CONTROL ACTS: THE LEGAL RESPONSIBILITY OF THE UNION IN THE FINANCING OF SCHOOL FEEDING

The insufficiency of federal transfers to the National School Feeding Program (PNAE) is not just a technical or budgetary issue: it is a state omission that challenges constitutional jurisprudence and the mechanisms of external control of the public administration. Over the past few years, both the Federal Supreme Court (STF) and control bodies, such as the Federal Court of Accounts (TCU) and the Office of the Comptroller General of the Union (CGU), have recognized the seriousness of the situation and pointed out the need for corrective action by the Union.

### 6.1 JURISPRUDENCE OF THE FEDERAL SUPREME COURT

The decision rendered in the Allegation of Non-Compliance with a Fundamental Precept (ADPF) No. 708 represents a watershed in the interpretation of the state's duty to ensure essential public policies. In this action, the STF determined that the Union cannot omit itself in the execution of strategic policies, even under the allegation of budgetary restrictions, reaffirming the principles of prohibition of social regression and the immediate effectiveness of fundamental rights (STF, ADPF 708, Rel. Min. Luís Roberto Barroso).

In another paradigmatic decision, in Direct Action of Unconstitutionality (ADI) No. 5595, the Court decided that the Union must guarantee the minimum resources required for health policies, even in the face of fiscal crises, highlighting that the public budget must be compatible with fundamental social rights. Such reasoning is directly applicable to the school feeding policy, which is part of the core of the existential minimum (SARLET, 2014; STF, ADI 5595).

### 6.2 PERFORMANCE OF THE FEDERAL COURT OF ACCOUNTS (TCU)

TCU Ruling No. 743/2025, the result of an audit coordinated with the CGU, identified serious flaws in the FNDE's operational controls, including the absence of traceability in



financial transfers, low inspection sampling, and the lack of institutional goals to improve the governance of the PNAE. The TCU recommended the adoption of automated auditing systems, an increase in the number of inspected samples, and greater transparency in the statements of application of resources (TCU, 2025).

In addition, TCU Ruling No. 4636/2023 had already pointed out the incongruity between the per capita values passed on and the actual estimated costs for school meals, especially in regional contexts with greater vulnerability. This official recognition of the gap strengthens the legal grounds for the requirement of budget recomposition.

### 6.3. Reports of the Office of the Comptroller General of the Union (CGU)

The CGU, in reports produced between 2022 and 2024, also warned of the precariousness of the accountability mechanisms of the federated entities and the absence of objective technical criteria in the definition of PNAE per capita transfers. Such weaknesses affect the effectiveness of the policy and expose the program to risks of diversion and underutilization of resources (CGU, 2024).

The acts and decisions of the control bodies and the highest Constitutional Court in the country demonstrate that the current financing structure of the PNAE contradicts both the legal precepts and the constitutional principles of proportionality, reasonableness, efficiency and equity. Based on this evidence, there are solid legal grounds for the judicialization of the issue, as well as for the formulation of administrative claims with the Ministry of Education, the FNDE and the National Congress.

## 7 CONCLUSION: RECOMPOSITION OF THE PNAE AS A CONSTITUTIONAL AND SOCIAL IMPERATIVE

The technical, legal and institutional analysis presented in this article unequivocally shows that the chronic underfunding of the National School Feeding Program (PNAE) directly compromises the effectiveness of the fundamental rights to food and education, especially among the most vulnerable populations in the country. The absence of automatic mechanisms for correcting federal transfers, combined with the fragility of the FNDE's operational controls, constitutes a state omission that contradicts constitutional precepts and international treaties to which Brazil is a signatory.

Although the PNAE remains an essential pillar of Brazilian educational policy, its sustainability and effectiveness are threatened by an outdated and unequal financing model, which penalizes precisely those entities with less capacity for budget supplementation. The permanence of this unjust logic reinforces regional asymmetries and compromises the republican ideal of educational and social equity.



In view of this scenario, it is urgent to adopt structuring measures, among which the following stand out:

The approval of Bills No. 2754/2023 and No. 1049/2023, which establish, respectively, the automatic update of transfers based on the IPCA of food and the inclusion of school meals as a mandatory expense linked to the constitutional education floor;

The implementation of the recommendations of the TCU and CGU, with emphasis on the modernization of control mechanisms, the automation of inspection processes, and active transparency in accountability;

The institutional mobilization of municipalities, School Feeding Councils (CAEs), the Public Prosecutor's Office, Public Defenders' Offices and civil society to press for structural reforms and judicialize, when necessary, the Union's omission to ensure the existential food and educational minimum;

The construction of a new cooperative federative pact, which recognizes the PNAE as a shared right and duty, with clear budgetary responsibility and proportional to the contribution capacity of the entities.

Finally, the defense of the PNAE is not just a technical or legal agenda: it is a moral and civilizing cause, which expresses the commitment of the Brazilian State to human dignity, social justice and the future of millions of children and adolescents.

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